IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

WRIT PETITION NO : 1216 of 1995 & W.P.No.1228 of 1995

W.P.No.1216 of 1995:

Between:

M/s Nucon Industries (P)Ltd., Rep by Chairman & Managing director,
Balanagar, Hyderabad.

..... PETITIONER

AND

1 Addl. Industrial Tribunal cum Addl. Labour Court Rep by Presiding Officer
Chandra Vihar, Hyderabad.
2 R. Paramasivam, C/o B. Amarnath Reddy (Advocate)
3-5-926/1, Upstairs,
Sangam Restaurant, Himayatnagar, Hyderabad,

.....RESPONDENT(S

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or a Writ Particularly one in the nature of WRIT OF CERTIRARI after calling for the records from the first respondent and quash the award passed in I.D.No.220/93 dt:3.11.93.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No1.: G.P. for Social Welfare

Counsel for the Respondent No.2: Mr.M.Manohar Reddy (not present)

The Court made the following :

WRIT PETITION NO : 1228 of 1995

Between:

M/s.Nucon Industries Pvt. Ltd.
Rep. by its Chairman & ManagingDirector Balanagar, Hyderabad,

..... PETITIONER

AND

1 Addl. Industrial Tribunal cum Addl. Labour Court, Hyd.
rep. by its presiding officer Chandravihar, Hyderabad,
2 N.Surendranath C/o.B.Amarnath Reddy
3-5-926/1, Upstrairs Sangam, Restaurant, Himayatnagar, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or a writ particularly one in the nature of writ of Certiorari after calling for the records from the first respondent and quash the award passed in ID No.221/93, dt.3/11/93.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondent No.1: G.P. for Social Welfare

Counsel for the Respondent No.2: Mr.M.Manohar Reddy (not present)

The Court made the following :

COMMON ORDER:

1. Both the writ petitions can be disposed of by a common order as they arise out of the proceedings passed by the Addl. Industrial

Tribunal-cum-Addl. Labour Court, Hyderabad.

2 . The petitioner-Management has filed these writ petitions. The respondents-workmen were terminated from service for misconduct on 22.9.1988. Aggrieved by the said termination, the workmen raised industrial disputes before the Tribunal. However, during the pendency of the disputes, the management withdrew the order of termination by an order, dated 19.7.1989 pending further disciplinary proceedings. Consequently, the industrial disputes were closed and awards were passed dismissing the industrial disputes. However, the Tribunal directed payment of full wages for the period from 22.9.1988 till the date of fresh termination order. The said orders are assailed in these writ petitions.

3 . The learned counsel for the petitioner submits that when the termination order was revoked on 19.7.1989 it was specifically mentioned that they continue to be under suspension and therefore, the Tribunal ought not to have awarded full wages and he also submits that subsequently, the workmen were terminated by an order dated 5.10.1989 and that order has never been challenged so far. Under those circumstances, the learned counsel submits that the awarding of full wages especially when an employee was placed under suspension is illegal and contrary to law.

4. Even though, notice was served on the respondents, the counsel appearing for the respondents are not present and there is no representation on their behalf. I have heard the learned counsel for the petitioner.

5. It is noticed from the proceedings of the Tribunal that the workmen were terminated on 22.9.1988, in respect of which disputes were raised, but however, during the pendency of the disputes, the management withdrew the order of termination on 19.7.1989 pending further disciplinary proceedings; and it is also stated in the said withdrawal letter that they are deemed to be under suspension. The

workmen did not challenge the said order of withdrawal.

6. Under those circumstance, the workmen would be entitled only to the subsistence allowance as they are deemed to be under suspension until further orders are passed and admittedly, in this case, the termination order was passed on 5.10.1989. Therefore, I hold that the order granting full wages to the workmen, who are placed under suspension is wholly illegal and without jurisdiction. Thus, I find that the awards passed by the Tribunal suffer from the error apparent on the face of the record.

7. Accordingly, the writ petitions are allowed and the awards passed by the Tribunal in I.D.No.220 of 1993 and I.D.No.221 of 1993, dated 3.11.1993 respectively are set aside. There shall be no order as to costs.

(G. BIKSHAPATHY, J.)

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Fourth day of November, Two thousand and Four.

ASSISTANT REGISTRAR

4th November, 2004.

Bcj/mrb

To

1 The Presiding Officer, The Addl. Industrial Tribunal-cum-Addl. Labour

Court, Chandravihar, Hyderabad,
2 Two C.Cs. to the Government Pleader for Social Welfare, High Court

Buildings, Hyderabad (OUT)

3 Two C.D. copies.